Caterpillar Tractor Company *and* International Union, United Plant Guard Workers of America (UPGWA) and its Local No. 108 *and* Joe M. Lofton. Cases 26-CA-8025 and 26-CA-8102

July 30, 1981

DECISION AND ORDER

On December 16, 1980, Administrative Law Judge Stephen Gross issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs, and Respondent filed a reply brief to the General Counsel's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Caterpillar Tractor Company, Memphis, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge inadvertently stated that the arbitration decision involving the discharge of Michael Hensley issued on September 1, 1980. The correct date is September 19, 1980.

[2] In agreeing with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) by interrogating employees Wiley, Hensley, and McGhee, we find it unnecessary to pass on those factors which the Administrative Law Judge listed as circumstances suggesting a lack of coerciveness. See ALJD, sec. III, G.

Although we agree with the Administrative Law Judge's conclusion that Respondent did not violate Sec. 8(a)(3) and (1) of the Act by discharging Hensley, we do not rely on his statement that "Sleeping on duty is commonly punishable by discharge." See ALJD, sec. IV, E.

DECISION

STATEMENT OF THE CASE

STEPHEN GROSS, Administrative Law Judge: Caterpillar Tractor Company (CAT) has operated a large warehousing and distribution center in Memphis, Tennessee, since 1975. CAT has employed security officers at the facility from the outset primarily for fire protection and antitheft purposes. Also from the outset the security officers' immediate supervisor has been Chief of Security Robert Hultquist.

In June 1978 a majority of CAT's security officers voted in favor of representation by the United Plant Guard Workers of America (UPGWA or the Union). In August 1978 the Union and CAT entered into a collective-bargaining agreement effective through November 30, 1979, covering the security officers. The agreement did not contain any union-security provision, and a number of the security officers chose to stay out of the Union.[1]

On September 7, 1979, 5 of the 14 security officers employed at CAT's Memphis facility filed a decertification petition with the Board.

On September 6, and then on October 15, 1979, the UPGWA filed charges with the Board alleging that Hultquist (the security officers' supervisor) had engaged in various antiunion conduct, including firing union member Michael Hensley because of his union membership and suspending security officer Joe Lofton because of his membership in the Union and because Lofton gave statements to the Board that were contrary to CAT's interests.

Those charges became the basis of complaints alleging various violations of the Act by CAT.[2] The case went to hearing on March 3, 4, and 5 and then again on March 13 and 14. The transcript of the hearing for March 13 and 14 was lost, however (see G.C. Exhs. 110(b) and (c) and 111), and, accordingly, 2 more days of hearing were held on May 14 and 15. The General Counsel and CAT have filed briefs[3] and the case stands ready for decision.[4]

FINDINGS OF FACT

I. ISSUES

Section III below discusses contentions by the General Counsel that Hultquist made a variety of statements in derogation of the employees' Section 7 rights. For the reasons stated in section III, I have concluded that Hultquist made some, but not all, of the remarks attributed to him by witnesses for the General Counsel.

Sections IV, V, and VI discuss, respectively, whether CAT engaged in any of the following actions attributed to it by the General Counsel: Discharged security officer Hensley because of his union membership and union activity; suspended security officer Lofton because of his union membership and activities and because of a statement he gave to the Board; and allocated overtime on the basis of its employees' union membership or lack of membership. For the reasons stated in sections IV, V, and VI, my conclusion is that the General Counsel has failed to prove any of these allegations.

[1] CAT does not dispute the General Counsel's assertion that CAT is an employer engaged in commerce for purposes of the Act, or that the UPGWA is a labor organization within the meaning of the Act.

[2] The dates of the various charges and complaints are as follows: September 6, 1979—original charge in Case 26-CA-8025; October 5, 1979—original charge amended; October 15, 1979—date of complaint in Case 26-CA-8025; October 17, 1979—charge in Case 26-CA-8102; November 15, 1979—complaint and order consolidating cases; and February 15, 1980—consolidated complaint amended.

[3] In view of the statistical nature of some of the evidence, I permitted reply briefs. CAT filed a reply brief (as well as an opening brief).

[4] The General Counsel filed an unopposed motion to correct the official transcript. The motion is granted.

II. BACKGROUND

Several facets of the case are pertinent to all of the General Counsel's contentions. It seems best to cover them before considering the allegations themselves.

A. *Chief of Security Hultquist*

Hultquist testified at length at the hearing, and he was the subject of considerable testimony by witnesses for both the General Counsel and CAT. The impression I gained of Hultquist from that testimony is that he is proud of the division he leads, places high demands on its members, and is especially demanding concerning all aspects of security officer behavior and performance that might affect the way outsiders (including other CAT personnel) may evaluate the division. I also got the impression that Hultquist's relationship with divisional personnel had paternal elements to it, a pattern common to many military-type organizations. (Indeed, Hultquist and nearly all of the security officers had backgrounds in the military or with police forces or both.) In keeping with that relationship, Hultquist seemed ready to support the divisional personnel within the limits defined by the standards outlined above. Also in keeping with that relationship, at least as a general rule, Hultquist seemed to be evenhanded with respect to handing out both discipline and benefits such as pay increases.

On the other hand, some—perhaps most—of the security officers thought Hultquist to be harsh, inflexible, disagreeable, and difficult with which to work.

B. *The Personnel of the Security Division*

The security officers at CAT's Memphis facility individually and as a group appear to be competent and to be proud of their division. There is, however, a divisiveness between union members, on the one hand, and nonmembers, on the other. Several nonmembers actively opposed the unionization of the security division when union organizational efforts were underway, and then sought to bring union representation of the security division to an end after the Union was voted in. That led to sharp feelings between some of the union members and the actively antiunion security officers. That hostility was heightened in a few cases by the fact that two nonunion security officers were responsible for divisional training, including instructing other security officers in various divisional tasks. While some divisional personnel seemed pleased to get the training, others seemed to feel threatened and demeaned by it.

C. *The Testimony of CAT's Witnesses*

Hultquist and the manager of CAT's Memphis facility, John Harris, testified without contradiction that CAT has an explicit policy of neutrality in matters relating to unions and that CAT promulgated that policy repeatedly.

CAT called five members of the bargaining unit to the stand in addition to various CAT supervisors. (None of the five were union members.) All testified that: (1) they had never heard Hultquist say any of the statements attributed to him by witnesses for the General Counsel; (2) they had never heard Hultquist say anything else that could be considered to be antiunion; and (3) they had never heard any security officer say that Hultquist had said any of the things attributed to him by the General Counsel's witnesses.

I was impressed by that testimony, especially by the testimony that none of the five had ever heard any of the other employees say that Hultquist had said anything that could be construed as antiunion. However, the weight to be ascribed to that testimony must take into account the divisiveness within the security division between union and nonunion employees. Given that divisiveness, it is not unlikely that union adherents within the division refrained from commenting to antiunion employees about any statements relating to unionization that Hultquist may have made.

D. *CAT's Theory of the Case*

As CAT views things, the witnesses for the General Counsel engaged in deliberate and wholesale fabrications. According to CAT, the Union and its adherents at CAT had three purposes in filing charges against CAT: (1) they wanted to give Hensley (the security officer discharged for sleeping on duty) "another bite of the apple of reinstatement" (CAT's br. at 15); (2) they wanted to delay Board action on the decertification petition that had been filed with the Board by five of CAT's security officers;[5] and (3) they wanted to malign Hultquist—i.e., "[C]ertain security officers or a group of them bear personal animosity to Chief Hultquist and will go (and have gone) to any lengths to degrade, embarrass or undermine him or his authority." *Ibid.*

Turning first to the claim that this case hinges on the efforts of some CAT employees to help Hensley and to delay Board action on the decertification petition, some evidence does support that, but not in the manner CAT claims. Marvin Harris is the unit chairman in the security division. An antiunion member of the division asked Harris about the charges the Union had filed against CAT. According to that employee's testimony, which I credit, Harris replied:

> He said . . . he regretted a lot of stuff had to come out but . . . when he reported what [had] happened to [the] International—that . . . Mike [Hensley] had been discharged . . . they advised him that that was the best—I think the term he used was "maneuvering tactic" to use.

However, what that testimony indicates and what the testimony as a whole in this proceeding points to is that the concern of the Union and the members of the Union at CAT for Hensley convinced those employees to bring to the Board's attention behavior by Hultquist that they had long considered antiunion but with which they had previously been willing to put up.

As to CAT's claim that this case represents an effort by a group of security officers to damage Hultquist be-

[5] The first charge was actually filed just 1 day before the decertification petition, but by early September 1979 many, if not all, of the division's employees had been aware for some time that a decertification petition would be filed within the permissible 60-to-90-day period.

cause of the personal animosity towards him on the part of the members of that group, the record fails to support that argument. To begin with, the impression I got from the testimony of the General Counsel's witnesses is that Hultquist is a good security chief, not that he is a bad one. That would not have happened had the employees in fact been out to get him and been willing to lie to do so. Secondly, in almost all cases the union members' testimony appeared to represent the recollections or viewpoints of each witness rather than a planned effort by the group to concoct an irresistible attack against Hultquist.

III. STATEMENTS BY HULTQUIST VIOLATIVE OF EMPLOYEE RIGHTS

Various of the General Counsel's witnesses testified that Hultquist made the kinds of statements that, the General Counsel argues, violated the employees' Section 7 rights. According to that testimony, Hultquist:

(1) Questioned the value of the Union in discussions with employees.

(2) Asked various employees why they had voted in favor of union representation.

(3) Claimed that union representation had harmed the employees' interests.

(4) Said that he would discriminate in favor of nonunion employees and against union members.

(5) Made threats against the Union.

(6) Encouraged employees to give up their union membership and to revoke their dues-checkoff authorizations.

(7) Encouraged employees to file a decertification petition.

As I add up the record and, in particular, the credibility of the various witnesses, Hultquist did make some statements questioning the value of union representation and did question some employees about their position on union matters. In other respects, however, it is my conclusion that Hultquist did not make the statements attributed to him by the General Counsel's witnesses.

A. *Testimony of Charles Wiley and Michael Hensley*

Security officer Charles Wiley testified that around the first of May 1979 Hultquist asked him if he "felt that [he] had any more job security with the Union." When Wiley replied that "he liked to think so," Hultquist responded, again according to Wiley, "[H]e did not think anyone had any more security than they ever had . . . that there was no more security . . . with the Union than before the Union and that it was just as easy to . . . get rid of anyone as before." Hultquist denied ever having said any such thing.

Security officer Michael Hensley testified that on or about April 19, 1979, Hultquist asked him what he "thought the Union was doing for [him]. Had it changed anything or made anything better? Was [Hultquist] any different? And was [Hensley] making any more money now then [he] was before the Union came in." Hensley agreed that he was not making more money.

In that same conversation, according to Hensley, Hultquist asked him "why [he] thought the Union had come in." Hensley testified that he told Hultquist that Hultquist himself "was the direct cause of it."

On the witness stand Hultquist disputed Hensley's testimony, and said that the only conversation he had had with Hensley's at or about that time had to do with Hensley improperly disclosing information about the security division to nondivision CAT employees.

The issue is one of credibility, and I think that Hultquist did make the statements attributed to him by Wiley and Hensley.

On the one hand, (1) Hultquist was a believable witness, and (2) official CAT policy, as frequently promulgated, was for supervisors to be strictly neutral on matters pertaining to unions.

However, on the other hand, I was particularly impressed with what seemed to be the real effort of both Hensley and Wiley to be as accurate and careful in their testimony as possible.[6] Futher, I got the impression, after listening to all of the various witnesses, that, given Hultquist's personality and his relationship with the employees in the security division, it is more likely than not that he made the statements testified to by Hensley and Wiley.

As a last matter in this respect, I of course took into account that Hensley might have testified as he did in order to bolster his claim that CAT discharged him because of his union membership. Nevertheless, based on what I saw of and heard about Hensley, and on the nature of his testimony generally, my conclusion is that he did not do that.

B. *Testimony of Hubert McGhee*

Security officer Hubert McGhee testified that in August 1979 Hultquist asked McGhee if "a third party was doing anything" for him. McGhee said that, when he asked Hultquist whether Hultquist was referring to the Union, Hultquist answered, "[Y]es, more or less." McGhee testified that he told Hultquist that he "did not want to discuss it."

According to McGhee, in that same conversation Hultquist also said that he "understood that there were people [who were] going to come down and get on him about the department, how he was running it and so forth. And that he was here to tell them that he was going to run the department like he wanted to, and that nobody was going to tell him how to run it. And that he did not care if there was harmony within the department or not amongst the men." Hultquist denied making any such remarks.

Two aspects of McGhee's testimony concern me. One is that he was a steward, which arguably makes it less likely that Hultquist would have raised such matters with him. The second is that McGhee at first testified that his

[6] CAT claims that Wiley's testimony is not credible since, on the one hand, he referred to the events as occurring on May 1, and, on the other, documentary evidence shows that he did not work on May 1 or 2. However, Wiley did work on April 30 and then again on May 3, and he did not even pretend to remember the precise date on which his conversation with Hultquist took place. Similarly, CAT points out that Hensley testified that the conversation in question took place on or about April 19, and that undisputed company records show that Hensley was off duty on April 18 and 19. I am not persuaded that the apparent conflict is a real one. Hensley stated that he could be a day or so in error regarding the precise date, and an error of several days would be understandable.

conversation with Hultquist took place on October 19, then testified that it occurred on October 10, and then, after being shown an affidavit he had given to the Board, said that the conversation must have occurred sometime in August. Dates of past occurrences are difficult to remember, but in McGhee's case he purported to remember the precise date of the conversation in question only to change that date twice.

I find, however, that those considerations are outweighed by the impression I got from the way McGhee testified, and from the personalities of McGhee and Hultquist, that the conversation occurred in the way McGhee described it.

C. *Testimony of Michael Donnelly*

Security officer Michael Donnelly testified that, in the course of a conversation he had with Hultquist in the security office, Hultquist asked, "What has the third party done for you? Has it improved your working conditions or any degree of control." According to Donnelly, Hultquist also asked if Donnelly "thoroughly" understood the collective-bargaining agreement, but Donnelly could not remember when he had that conversation with Hultquist except that it was sometime in 1979. As CAT points out, for all anyone knows that alleged statement by Hultquist could have occurred prior to March 6—that is, more than 6 months prior to the date the first charge was filed in this proceeding.

CAT's point is well taken. Given the requirements of Section 10(b), no violation of the Act may be found based on Donnelly's testimony on the subject at hand,[7] and in view of that it is unnecessary to determine whether Donnelly's testimony should be credited.

D. *Testimony of David Hall*

David Hall is a member of CAT's security division and a union member. Hall testified that sometime "in the early part of March 1979" Hultquist criticized Hall for failing to conduct certain equipment tests. Hall got upset and later that day told Hultquist that he thought he had been doing his job. According to Hall, Hultquist "replied that he knew that I had been doing my job and that I had chosen it to be this way. . . . He said that it had cost me approximately $2,000.00. . . . Mr. Hultquist made reference to Mr. Wiley [another security officer and union member]. That I was being influenced by Mr. Charles Wiley. . . . I believe Mr. Hultquist said that he knew that people had referred to him as a big-nosed bastard, and that they would like to punch him in the nose."

When Hall was asked what he thought Hultquist was referring to, he testified that he was "not real sure" but that he thought Hultquist was talking about Hall's "union affiliation." Hultquist denied having any such conversation with Hall. I credit that denial in that I do not think Hultquist said anything to Hall that linked unionization with pay or performance evaluations. Hultquist may well have criticized Hall, referred to Wiley's influence, and indicated that he was aware of the unflattering way in which some of the employees thought of him, but it would have been unlike Hultquist to tell an employee that he had criticized him because of the employee's union membership. Further, with respect to the apparent reference to unionization costing the employees $2,000, some of the employees had used that figure in discussions among themselves about the impact of unionization. It is more likely than not that Hall had heard references to the alleged $2,000 cost of unionization in conversations with other security officers, and later misremembered it as being connected to an upsetting encounter he had had with Hultquist in March 1979.

E. *Testimony of Joe Lofton*

Joe Lofton is a security officer at CAT. He joined the Union when it was voted in but withdrew from the Union and ceased paying dues in March 1979. Lofton testified that he had a number of conversations with Hultquist in which union matters were discussed. According to Lofton, Hultquist: (1) urged Lofton to leave the Union; (2) criticized the Union's management; (3) questioned the value of union representation; (4) said that the security officers lost benefits at CAT as a result of voting for union representation; (5) promised Lofton benefits if he would leave the Union; (6) thanked Lofton for leaving the Union and promised him benefits for doing so; (7) assisted Lofton in resigning from the Union; (8) said that "those guys broke my heart when they got this Union in here"; (9) urged and assisted Lofton and other employees to seek to decertify the Union, and (10) made threats against the Union.

Lofton also claimed that Hultquist suspended him because he gave a statement to the Board critical of CAT, a subject that will be covered in section V of this Decision.

Lofton was personable and direct while on the witness stand. Nonetheless, my conclusion is that his testimony is not credible.

For one thing, Lofton's testimony is full of relatively precise dates, but those dates in numerous instances do not jibe with one another.

Second, several persons that he claimed were witnesses to his interactions with Hultquist credibly denied Lofton's version.

Third, considerable testimony of other employee witnesses strongly suggests that conversations Lofton testified he had with Hultquist actually were between Lofton and other rank-and-file employees.

Finally, my overall impression is that, while everyone's perception and memory are affected by one's point of view, that was more than usually so in Lofton's case.

Accordingly, I conclude that the General Counsel has failed to show that Hultquist made any of the statements that Lofton attributed to him.

F. *Testimony of Frank Kinder*

Frank Kinder is a CAT security officer and a union steward. Kinder testified that Hultquist: (1) questioned whether the "third party" had done anything for Kinder; (2) urged Kinder to leave the Union; (3) promised that Kinder would be alotted more overtime if he got out of the Union; and (4) implied that CAT's discharge of

[7] See *Wellman Management Inc., d/b/a Elaine Powers Figure Salons*, 227 NLRB 1307, 1309 (1977).

Hensley (see sec. I below) was related to Hensley's union membership.

Hultquist denied all of Kinder's allegations and I credit Hultquist rather than Kinder.

To a degree far beyond that of any other security officer at CAT, Kinder's viewpoint was that Hultquist was out to get the Union and each of its members at CAT. That led Kinder to keep a "blue book" in which he sought to document antiunion behavior on Hultquist's part. It also led Kinder to believe that Hultquist's understandable demand that Kinder be tested on fire equipment that he was expected to operate in emergencies was a function of his union membership.

My impression was that, much as in Lofton's case, Kinder's testimony was far more an expression of his viewpoint than of the way things actually happened. Moreover, it would have been out of character for Hultquist to make most, if not all, of the remarks attributed to him by Kinder, particularly to an employee that Hultquist knew to be the owner of the notorious blue book.

My conclusion, therefore, is that the General Counsel has not shown that Hultquist made any of the remarks that Kinder testified Hultquist made.

G. *Hultquist's Statements—Conclusions*

For the reasons discussed above, I find that Hultquist:

(a) Asked employee Charles Wiley whether he "felt that [he] had any more job security with the Union."

(b) Stated to employee Wiley that "he [Hultquist] did not think anyone had any more security than they ever had . . . that there was no more security . . . with the Union than before the Union and that it was just as easy to . . . get rid of anyone as before."

(c) Asked employee Michael Hensley what he "thought the Union was doing for [him]. Had it changed anything or made anything better. Was [Hultquist] any different? And was [Hensley] making any more money now than [he] was before the Union came in."

(d) Asked employee Hensley "why [he] thought the Union had come in."

(e) Asked employee Hubert McGhee if McGhee "thought that a third party was doing anything for [him]."

(f) Stated to McGhee that notwithstanding any "people [who were] going to come down"—presumably from the Union—"he was going to run the department like he wanted to."

The question is whether those questions and statements reasonably tended to coerce employees in the exercise of their Section 7 rights.

A number of circumstances suggest a lack of coerciveness: (1) none of the utterances contained any antiunion threats; (2) the employees were open union adherents and knew that Hultquist knew that they were union members; (3) Hultquist had never threatened union members or had previously spoken against the Union; (4) CAT's companywide policy, which it publicized, was one of neutrality with respect to union representation of its employees; (5) the conversations occurred in working or rest areas as opposed to, say, Hultquist's office; (6) most, or all, of the employees at the facility were represented by unions, not just the security officers; and (7) Hensley and Wiley felt sufficiently unintimidated to make their prounion positions clear in their responses to Hultquist, and McGhee, while not taking a prounion stand in his reply to Hultquist (he said he "didn't want to talk about it"), apparently did not feel constrained to suggest that he had any doubts about the benefits of unionization.

On the other hand, all of the utterances in question indicated Hultquist's displeasure with union representation of the security division's employees, and Hultquist was the CAT official who hired, fired, and disciplined security officers (subject to limited control by the facility manager). In addition, the division operated along paramilitary lines, so that Hultquist had more control over the day-to-day behavior of the division's personnel (e.g., how often to get a haircut) than is generally the case in industrial situations. Finally, the division's employees were sharply split into prounion and antiunion camps, so that Hultquist's questions and statements about the Union would inevitably be understood as support for the antiunion group.

Under all these circumstances, and in light of the Board's recent *PPG Industries* decision,[8] I conclude that the questions, quoted above, that Hultquist addressed to Wiley, Hensley, and McGhee amounted to a probing of those "employees' union sentiments which . . . reasonably tend[s] to coerce employees in the exercise of their Section 7 rights."[9]

As to Hultquist's statement that he "did not think anyone had any more job security than . . . they ever had," the General Counsel appears to claim that it amounted to a violation of Section 8(a)(1) in that it was an expression of "the futility of continued union support." However, that statement was no more than an expression by Hultquist of his opinion about the value to employees of union representation. See *Safety Line, Inc.*, 250 NLRB 458, 460 (1980); *North Kingstown Nursing Care Center*, 244 NLRB 54, 65 (1979). Further, while Hultquist referred in the course of the conversation to the ease of getting "rid of anyone," under the circumstances of the conversation said reference constituted no threat, veiled or otherwise.

Finally, Hultquist's remark to McGhee about Hultquist's running "the department like he wanted" was in reference to his supervisory role, and clearly did not relate to the Union's function as bargaining representative. The remark was therefore noncoercive (see *Albertson Manufacturing Company*, 236 NLRB 663, 676 (1978)), and, indeed, the General Counsel does not appear to argue otherwise.

IV. HENSLEY'S DISCHARGE

A. *Introduction*

Hensley's shift on August 19 began at 11 p.m. (as usual). At 6 a.m. (on the 20th) Hensley opened one of the gates at CAT's facility and began duty in a nearby

[8] *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980).

[9] *Id.* at 1147.

gatehouse as the security officer overseeing entry and exit through that gate.

According to Hensley, at or about 6:30 a.m., Lloyd Paulsen, "who is a third shift storeroom supervisor, came down to the gate. Mr. Paulsen grabbed the doorknob to the door and I got up and opened the door for him. I said 'good morning Mr. Paulsen. How are you?' And he said, 'you wouldn't fall asleep down here—would you?'" Hensley said that he responded with an expletive.

Paulsen's testimony was very different except for his agreement that the event occurred at or about 6:30 a.m. on August 20. According to Paulsen, while he was near the gatehouse, he noticed (through the gatehouse window) that Hensley was asleep. Paulsen testified that he stared through the gatehouse window at Hensley for awhile, then attempted to call another of CAT's supervisors to the scene. When he could not reach that second supervisor, he decided to go into the gatehouse and awaken Hensley. The time was then about 6:40 a.m. Paulsen said that the door was locked but that Hensley awoke when Paulsen jarred it. Paulsen testified that he then asked Hensley, "[D]idn't you get much sleep last night," to which Hensley answered, "No. I'm really tired. I guess I just dozed off."

Most of the testimony and documentary evidence about the events immediately following the Hensley-Paulsen encounter are in accord. Paulsen ordered Hensley removed from duty as gatehouse officer and took Hensley to the facility's security control room. There Paulsen called Hultquist (who was at home) to inform him that Paulsen had found Hensley asleep on duty and advised Marvin Harris—the unit chairman—of the circumstances. Hultquist hurried to the facility. Hensley was waiting in the security control room with Harris. Hultquist called Hensley into his office and asked Hensley what he had to say. According to Hultquist, Hensley replied something like, "I don't really know, chief . . . I don't think I was sleeping." Hensley, on the other hand, testified that he said that he had not been asleep. Hultquist at that point asked Marvin Harris to join the discussion and told Harris and Hensley what Paulsen had reported. Hultquist then suspended Hensley pending further investigation.[10]

Paulsen, in the meantime, submitted a report of the incident and discussed the matter with his superiors.[11]

Hultquist advised the facility manager, John Harris, of the incident, asked for more information from Paulsen later that day, and then also filed a report on the incident.[12]

Hultquist spoke to Paulsen one more time and then, on August 22, filed a "progress report" ordering Hensley discharged. Facility Manager Harris approved Hultquist's action and Hensley was in fact discharged on that day.

The General Counsel claims that Hensley's discharge was a setup from start to finish in an effort by the Company to weaken the Union's position at CAT. Hensley, argues the General Counsel, was not in fact found asleep on duty. The General Counsel also argues that, even if I were to conclude that Hensley was found asleep on duty, CAT opted to discharge him rather than to give him some lighter form of discipline because of Hensley's activities on behalf of, and his affiliation with, the Union.

CAT, on the other hand, argues that the evidence is clear that Hensley was asleep on duty and that Hensley's association with the Union had nothing whatever to do with his discharge. The Company goes on to urge that I should not even get into the matter since the Union filed a grievance over Hensley's discharge, the grievance went to arbitration, and the arbitrator has issued a ruling on the matter (upholding the Company's position).

B. *CAT's Motion To Defer to the Arbitrator's Ruling*

When Hensley was discharged the Union prosecuted its rights under the grievance machinery established by its collective-bargaining agreement with CAT. That led to a hearing before an arbitrator in May 1980.

After CAT had presented its case to the arbitrator, but prior to any union witnesses' testifying before the arbitrator, the Union's counsel made the following statement to the arbitrator:

> I have been cautious in this matter not to attempt to try the "C" case that is pending before the National Labor Relations Board. There is sufficient evidence already in this record to suggest strongly, however, that the reason for the precipitous discharge of Mr. Hensley was not alleged sleeping on duty but because of the course of anti-union antipathy. And it was present in this particular facility, and culminated in the unfair labor practice proceeding now being processed before the National Labor Relations Board.[13]

The record in this proceeding does not indicate whether any union witness at the arbitration hearing testified on matters relating to union animus on CAT's part.

The arbitrator issued his decision on September 1, 1980. The issues, as he framed them, were: (1) whether Hensley was sleeping as charged, or simply momentarily inattentive to duty; (2) whether the Company denied Hensley his *Weingarten* rights; (3) whether the Company's investigation was a "sham"; and (4) whether the Company imposed an inappropriately severe penalty on Hensley.

The arbitrator ruled in favor of CAT on all issues (without, however, explicitly discussing the Union's contention that CAT's investigation was a sham).

[10] On brief the General Counsel suggests that Hultquist behaved improperly when he asked Hensley for his version of the incident prior to calling Unit Chairman Harris over. *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975). However, the complaint makes no *Weingarten* allegation, and the General Counsel does not urge on brief that there was in fact any *Weingarten* violation. Moreover, neither Hensley nor Harris asked that Hensley be accompanied by Harris in Hensley's interview with Hultquist. Finally, it is at least arguable that, even if the *Weingarten* issue had been properly raised, I would have to defer to an arbitrator's decision that specifically dealt with the issue (and found no improper conduct by the Company). See sec. IV, B, below.

[11] Hensley's personnel records at CAT are part of the evidentiary record as Resp. Exh. 2. Paulsen's report is included in those papers.

[12] See fn. 11, above.

[13] Quoted from the record of the arbitration proceeding.

Deferral would not be appropriate. The problem is that the arbitrator's decision does not indicate that he considered any alleged union animus in arriving at his decision and that there was no showing in this proceeding that any union witness in the arbitration proceeding presented evidence purporting to prove antiunion motivation on CAT's part. See *B & L Motor Freight, Inc.*, 253 NLRB 115 (1980); *Kahn's and Company, Division of Consolidated Food Co.*, 253 NLRB 25 (1980); *Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc.*, 247 NLRB 1185 (1980); *General Warehouse Corp.*, 247 NLRB 1073 (1980).[14]

C. *The Merits of the Discharge*

1. Hensley's union activities

At the time of Hensley's discharge he was a member of the Union, and Hultquist knew that to be so. Hensley was not an officer of the Union or otherwise particularly active in the Union, and he seemed to have a better relationship with CAT's nonunion security officers than did many of his fellow union members. However, when the Union first began its organizational efforts among CAT's security officers in early 1978, four or five of its organizational meetings were held in Hensley's home.

The General Counsel points out that at the time of Hensley's discharge, of the 14 security officers in the bargaining unit, 8 (including Hensley) were members of the Union. Hensley's discharge, in other words, may have eliminated the Union's majority position.

2. CAT's rule on sleeping on the job

CAT had no comprehensive list of punishable offenses, and there was no written rule prohibiting sleeping on the job. It is clear, however, from the testimony as whole—including Hensley's—that the employees of CAT's security division knew full well that sleeping on the job was a serious offense.

3. Hensley's relationship with CAT supervisors

Two CAT supervisors were directly involved in the incident that led to Hensley's discharge—Hultquist and Paulsen. Paulsen testified credibly that he considered himself a friend of Hensley's, that he shared a common interest with Hensley (in firearms), and that he had had a number of conversations with Hensley on the subject. Paulsen had no direct working relationship with Hensley because during the time period in question Paulsen was not associated with the security division.

Nor is there anything to indicate that Hultquist had any grudge against Hensley whether for union matters or otherwise. Hensley seemed to be a cooperative, competent employee, and, while Hultquist undoubtedly was not delighted with Hensley's comments during their conversation about the Union in April, there is no reason to believe that Hultquist would have held Hensley's response against him or, for that matter, would have thought about that conversation at all 4 months later when the sleeping incident occurred.

4. Paulsen's catching Hensley asleep

There were only two witnesses to Hensley's behavior in the gatehouse at 6:30 a.m. on August 20—Paulsen and Hensley—and between the two I found Paulsen's testimony to be the more credible.

For one thing, Paulsen had no personal reason to want to get Hensley or the UPGWA. Accordingly, if Paulsen was fabricating his testimony, it would mean that he had entered into some sort of plan with Hultquist or other CAT personnel to get Hensley and/or the Union. However, there was no evidence of any such plot, and in fact Paulsen's interaction with Hultquist strongly indicates that there was no such plot.

For another, Paulsen's testimony was direct and forthright, and, while I found Hensley to be a highly credible witness generally, I felt that he was not altogether straightforward in his description of the gatehouse incident.

Two of the General Counsel's witnesses—Kinder and Lofton—testified about conversations and events that could, if credited, indicate that Hultquist knew that Hensley was not in fact asleep and that Hensley's discharge was related to his union membership. However, as discussed earlier, I did not find either Kinder or Lofton to be credible witnesses. Moreover, Lofton's testimony was that Hultquist admitted that Hensley's discharge was somehow related to Kinder's practice of taking notes in his blue book, but the record contains no plausible suggestion of how these two circumstances could be related.[15] Further, even if they were, it is hard to imagine Hultquist's mentioning it to Lofton. Kinder testified that Hultquist encouraged Kinder to submit a dues-checkoff revocation slip and then told Kinder, "You know I have as of now discharged Michael Hensley." Given the personalities of Kinder and Hultquist, and the relationship of the two men, that conversation seems equally unlikely.

In sum, I find that Hensley did fall asleep while on duty at the gatehouse on August 20, 1979, as described by Paulsen.

D. *The Appropriateness of the Discharge Penalty*

As touched on earlier, the General Counsel claims that, even if Hensley did fall asleep on duty, the reason Hensley was discharged rather than given some lighter form of discipline was because of Hensley's union membership and CAT's interest in weakening union strength to below majority level. The General Counsel's evidence falls into four different categories.

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[14] The arbitrator's opinion and the excerpt from the arbitration record (see fn. 13 above) were attached to a motion for deferral submitted by CAT on September 30, 1980. The General Counsel and the Union filed pleadings opposing the motion, but did not object to CAT's submission of the opinion and the excerpt. Various facts relating to the arbitration proceeding were also included in the Union's pleadings opposing CAT's motion. No party objected to that. Under the circumstances I am going to include the arbitrator's opinion, the excerpt, and the Union's pleadings in the evidentiary record as, respectively, ALJ Exhs. 1, 2, and 3.

[15] Kinder testified that a fellow employee told him that he (Kinder) "was the one that was supposed to have been caught sleeping at the gate house." Whether or not that conversation in fact occurred, I do not consider it entitled to any weight insofar as it purports to indicate the behavior of CAT or any CAT supervisor.

The first is that there was no written rule against sleeping on the job. However, as mentioned earlier, all of the employees knew full well that sleeping on duty was a serious offense.

Secondly, the General Counsel argues that several other security officers were caught sleeping on the job but were not discharged. One of those employees allegedly was Thomas Hollowell, who was stridently antiunion. Kinder said that he found Hollowell sleeping on the job, but, apart from Kinder's general lack of credibility, there is nothing in the record indicating that Kinder ever told Hultquist or any other CAT supervisor about his finding Hollowell asleep.

Lofton testified that Hultquist caught him asleep on duty and that he was not disciplined in any way, much less discharged. As with Kinder, Lofton's lack of credibility makes me dubious about whether that ever in fact occurred. Similarly, Donnelly testified that in 1977 Hultquist caught him asleep on duty. According to Donnelly, Hultquist simply sent Donnelly home early (without even docking him in pay) after telling Donnelly that he would have had to have been fired had a collective-bargaining agreement been in force. There was so much testimony in conflict with Donnelly's that it is clear that in many particulars his account of that 1977 incident was erroneous. On the other hand, there was something about his testimony that rang true, and, accordingly, I find it more likely than not that sometime in 1977 Hultquist did in fact find Donnelly asleep yet did not formally discipline him for it.

Nevertheless, even if Donnelly's and Lofton's testimony were considered wholly accurate in respect to Hultquist's finding them asleep, that would not indicate that Hensley was discharged because of his connection with the Union. Hensley was found asleep by a CAT supervisor who was not part of the security division. Moreover, that CAT supervisor (Paulsen) submitted a written report on the incident up through his own chain of command. Under those circumstances it was inevitable that Hensley would be discharged. Hultquist was rigid about the security officers' adhering to CAT's standards in all circumstances in which the security officers' performance was visible to people outside the security division. Given this outlook on Hultquist's part, it would have been one thing for him to find a security officer asleep in the division's control room and quite another for a security officer to be written up by an outsider for sleeping while on duty in a gatehouse.

E. *Conclusion*

Sleeping on duty is commonly punishable by discharge,[16] especially where the employee is a security guard.[17] In Hensley's case he fell asleep while on duty guarding a gate through which very considerable amounts of CAT's property could have been removed while he was asleep. On top of that, he was found asleep by a supervisor outside his own division, and that supervisor filed a report that was destined to be read by the facility manager. Hultquist, Hensley's immediate supervisor, had shown himself to be uncompromising with respect to the division's appearance to the outside world. Hensley's discharge was the inevitable consequence of these circumstances. The General Counsel has accordingly failed to show that Hensley's discharge was motivated by any union animus on CAT's part.

V. LOFTON'S SUSPENSION

As discussed earlier, Joe Lofton became a member of the Union about the time it was certified to represent CAT's security officers. He then left the Union in March 1979 and did not rejoin.

As also discussed earlier, the Union filed its first charge against CAT on September 6, 1979. Lofton gave a statement to a Board investigator on matters relating to that charge and presumably the statement was contrary to CAT's interests. Thereafter, Lofton became convinced that Hultquist had somehow learned that Lofton had given a statement to the Board in connection with the Union's charge, but there is nothing in the record that would indicate that Lofton's belief was accurate.

Then, on October 15, Hultquist told Lofton that his hair length did not conform to the division's dress standards and that he would have to get a haircut. A number of other security officers were within earshot at the time. Lofton responded that his hair was not too long and that the real reason Hultquist was complaining about his hair was because "I had come down . . . to give a statement to the Labor Board on this union thing." Hultquist, however, remained adamant and ordered Lofton to get a haircut before he came in the following day. At the hearing Lofton testified that at the time Hultquist criticized his hair length it was in compliance with the dress code and that he was less in need of a haircut than various other employees, but Hultquist and several security officers credibly testified that Lofton's hair was too long to meet the division's dress code.

When Lofton arrived at work the following day, October 16, Hultquist called Lofton and Marvin Harris into the security division office and informed Lofton that his hair was still too long. Hultquist thereupon suspended Lofton for 3 days.

When Lofton returned to work on October 19, Hultquist, after seeing Lofton, called him into a meeting with Union Steward Hubert McGhee and another CAT supervisor. Hultquist told Lofton that his hair remained too long and that he was to be indefinitely suspended.

A few days later Hultquist called Lofton at home and suggested that Lofton get his hair cut and come back to work. Lofton did so, but Hultquist told Lofton that he was still not complying with the dress code. Lofton got another haircut. That satisfied Hultquist, and Lofton resumed working at CAT. Subsequently, according to Lofton, the CAT supervisor who was present when Hultquist indefinitely suspended Lofton told Lofton that he did not think Lofton's hair was in fact too long, but that supervisor credibly denied making any such remark.

The General Counsel argues that Hultquist's "harassment" of Lofton stemmed from Lofton's willingness to give a statement to the Board and that said harassment

[16] See, e.g., *Savannah Wholesale Company*, 251 NLRB 500 (1980).

[17] See, e.g., *Burns International Security Services, Inc.*, 234 NLRB 373 (1978).

accordingly constituted a violation of the Act. The record fails to support that contention.

For one thing, as discussed earlier, I did not find Lofton's testimony to be credible. I am convinced that Lofton was convinced that Hultquist's actions stemmed from Lofton's willingness to give a statement to the Board, but I simply do not believe that Lofton's perceptions were accurate.

Secondly, Hultquist was uncompromising about the security officers' hair length. A number of security officers testified that Hultquist had ordered them to get haircuts from time to time and all did as Hultquist demanded. (Lofton himself had previously been ordered to have his hair cut and, when he failed to do so, had been suspended.)

Third, testimony by other security officers that Lofton's hair was too long seemed credible.

Fourth, Lofton's refusal to cut his hair in response to a direct order by Hultquist occurred in the presence of other security officers. Given the nature of the division and Hultquist's personality, it was inevitable that in those circumstances Hultquist would be adamant about requiring Lofton's hair to be wholly in conformity with the dress code before allowing Lofton to return to work.

Fifth, testimony of other security officers in support of Lofton's position was ambiguous at best. The General Counsel did not see fit to ask Unit Chairman Harris, who accompanied Lofton when Lofton received his 3-day suspension, whether Harris considered Lofton's hair to be in conformity with the dress code at the time. As for McGhee, the union steward who was present when Lofton was indefinitely suspended, he testified that he told Hultquist at that time that in his opinion Lofton's hair "was in regulation." However, his role at that time was as an advocate for Lofton, and he did not testify at the hearing in this proceeding that he did in fact consider Lofton's hair to be in complicance with the division's dress code when Hultquist indefinitely suspended Lofton.[18]

All told, Hultquist routinely ordered security officers to get haircuts, and suspension for failure to do so was certainly not unprecedented given the fact that such had previously happened to Lofton himself. While in theory Hultquist's behavior could nonetheless have been the product of his irritation at Lofton for giving a statement to the Board, there is no credible evidence that that was the case here, and there is considerable evidence that Lofton's hair was in fact too long to meet the division's standards.

[18] The General Counsel points out that Lofton testified that the appearance of his hair on October 15 was no different from his appearance in April 1979 when Hultquist saw fit to commend Lofton and promised Lofton that he would be promoted to the "highest grade." According to the General Counsel, Hultquist did not deny Lofton's testimony on this point, and "it stands admitted on the record, therefore, that Respondent tolerated the appearance of Lofton's hair for at least five months prior to October 15." I do not read the record as containing any such admission. In any case, a failure to criticize an employee on one date about hair length does not suggest that subsequent criticism for the same hair length shows unlawful motivation.

VI. THE OVERTIME ISSUE

In 1977, long prior to the UPGWA's arrival at CAT, Hultquist determined that the security division ought to have two training officers. He asked for volunteers in order of seniority. Wiley, Waller, Duncan, Hall, Harris, and Kinder refused. Ryan and Hollowell accepted.

That apparently resulted in Ryan's and Hollowell's getting work assignments different from those of the other security officers, and that led the Union, in negotiations with CAT in mid-1978, to urge that Ryan's and Hollowell's special status be ended. CAT took an opposing position, and insisted that it be allowed to keep Hollowell and Ryan on as training officers and to give them assignments commensurate with that designation. CAT won.

CAT also insisted on, and got, a collective-bargaining provision specifically providing for irregular shifts if needed because of "operation requirements."[19]

Hultquist established a 3–11 a.m. irregular shift in June 1979. No one contends that Hultquist's action in establishing that shift was not in accord with "operation requirements," that it was discriminatory, or that it was otherwise improper. Hultquist asked for a volunteer for that shift, again proceeding by order of seniority. Wiley, Waller, and Duncan said that they were not interested. Hall (a union member) agreed to make the switch. He started working the 3–11 a.m. hours on June 15.

At that time Hultquist needed extra help during the last 4 hours of the first shift (from 11 a.m. to 3 p.m.). The only practical alternative was to have a second-shift employee come in early or to have Hall work late.[20] The collective-bargaining agreement does not cover how that choice should be made, but Unit Chairman Harris had the foresight to raise the matter when the irregular shift was about to be instituted. He urged that, in a situation in which either a regular shift employee or an irregular shift employee could work the needed overtime hours, the choice be based on accumulated overtime. The collective-bargaining agreement provides: "Management will endeavor, to the best of its ability, to equalize overtime hours among employees on the same shift." (Jt. Exh. 1 at p. 13.) In practice that meant that, when overtime work was needed on a particular shift, the employee on that shift who had worked the least amount of overtime was the first to be offered the opportunity to do the extra work.[21] If that employee turned down the opportunity, then the employee on that shift with the second lowest level of overtime was to be offered the additional work, and so on. Harris wanted to follow the same kind of approach when overtime work could be done by either the irregular shift employee or by someone on a regular shift; that is, in the situation involving Hall, Harris wanted Hultquist to choose Hall for the overtime only if he had less accumulated overtime than

[19] Jt. Exh. 1 at p. 13.

[20] While Hultquist could have asked an off-duty employee to come in to work those 4 hours, that would have resulted in considerably greater expense to CAT.

[21] For these purposes an employee was credited with having worked overtime hours even if he was offered the opportunity to work overtime and turned it down.

any employee on the second shift. Hultquist rejected that approach. Harris testified that, according to Hultquist, it was CAT's companywide policy that irregular shift employees should work the overtime when the overtime could equally well be covered by either an irregular shift employee or a regular shift employee.

Accordingly, Hall worked 4 hours late more often than not (from 11 a.m. to 3 p.m.). As it turned out, Harris' concern was academic regarding the 11 a.m.–3 p.m. work since during the period in question all of the second-shift employees had been working overtime far more often than employees on any other shift. Thus, Hall would have been assigned the 11 a.m.–3 p.m. overtime even under Harris' approach.

Hall went back to his regular first-shift assignment after a week or so. Ryan, next in turn in terms of seniority, rejected Hultquist's offer to work the irregular shift. Harris, next most senior security officer at CAT after Ryan, accepted.

During most of the week that Harris worked on the irregular shift, Hultquist needed overtime work at night—during the hours of 11 p.m.–3 a.m. Here, too, the choice was between having a second-shift employee work the hours (by staying late) or having Harris, on the irregular shift, come in early; and again, under either Harris' or Hultquist's, approach it would have been proper to use Harris, and in fact Harris came in early for 5 straight days.

Meanwhile, Hultquist was coming to the conclusion that the employees of the security division needed more training than they had been getting, and that certain kinds of inspections of safety equipment were not being carried out properly. That led Hultquist to put Hollowell on the 3–11 a.m. irregular shift (with Harris back to his regular first-shift assignment). Hultquist also at this time created an 11 a.m.–7 p.m. irregular shift and put the other training officer, Ryan, on that. There is no dispute that Hollowell and Ryan did perform specialized training functions during the regular hours of their irregular shifts, and I credit the testimony of Hollowell, Ryan, and Hultquist to the effect that Hollowell and Ryan were put on the irregular shifts for the reasons stated by Hultquist.

There appears to be no dispute that when extra help was needed either between 11 p.m. and 3 a.m. or between 11 a.m. and 3 p.m. Hollowell was given the overtime assignments rather than any second-shift employee. (Again, that would be in accord with either Harris' theory of overtime assignment or that of Hultquist.)

Similarly, when overtime was needed between 7 and 11 a.m., or between 7 and 11 p.m., it was offered to Ryan, although third-shift employees could equally well have been assigned the work. In this case, however, if Harris' proposal had been followed, third-shift employees would have been given preference over Ryan, since the third-shift employees had relatively low accumulations of overtime.

The third-shift employees for most of the period in question were all union members: Donnelly, Kinder, and Hensley. Therefore, I have considered whether Hultquist's insistence that the 7–11 a.m. and 7–11 p.m. overtime be assigned to Ryan rather than a third-shift employee was motivated by union animus, but there is no affirmative evidence that that was the case. Furthermore, the General Counsel did not attempt to rebut the statement that Hultquist made to Harris to the effect that the approach he followed was consistent with CAT's companywide policy.

In any case, the General Counsel does not appear to argue that the preference for Hollowell over second-shift employees and Ryan over third-shift employees was improper. Rather, the General Counsel points to the fact that: (1) prior to their assignment to the irregular shifts, Hollowell and Ryan were the only nonunion employees on the first shift; and (2) while Hollowell and Ryan worked the irregular shifts, they were assigned more overtime than were the first-shift employees (all union members) who remained on the first shift.

The General Counsel goes on to argue that the irregular shifts were not "shifts" for purposes of the provisions of the collective-bargaining agreement requiring CAT to equalize overtime "among employees on the same shift"[22] and that, accordingly, the irregular shift and the first shift should have been treated as one shift for overtime equalization purposes. If it were in fact proper to do that, it is clear that CAT would have failed to have equalized overtime among first-shift employees, and thereby would have failed to meet the requirements of the collective-bargaining agreement. That, says the General Counsel, amounts to a violation of Section 8(a)(5) of the Act and, independently, to a violation of Section 8(a)(1).

The record does not support the General Counsel.

As discussed earlier, there as been no showing that the irregular shifts were created for discriminatory reasons. Moreover, there is no reason to consider Hollowell and Ryan as members of the first shift for overtime purposes while they worked irregular shifts. The irregular shifts were shifts entirely distinct from any of the other shifts as the collective-bargaining agreement itself indicates.[23] Moreover, it is unclear how CAT could have equalized overtime between first-shift members, on the one hand, and irregular shift members, on the other, since the only practical options CAT had in regard to overtime assignments were, as discussed earlier, between the irregular shift employees, on the one hand, and second- or third-shift employees, on the other.

Finally, I have considered the testimony of various of the General Counsel's witnesses that suggests that Hultquist may have reduced the weekend overtime available

[22] Jt. Exh. 1 sec. 6.5.

[23] See Jt. Exh. 1 sec. 6.9. Ordinarily, when an employee went from one shift to another, that employee was made least senior on the new shift for overtime purposes—that is, a new employee, or an employee switching shifts, would be credited with more accumulated overtime than any other employee on the shift so that he would be the last to be assigned overtime as overtime needs arose. Had that practice been applied to Hollowell and Ryan, first-shift employees would have gained overtime opportunities at the expense of Hollowell and Ryan when those two officers resumed their first-shift status in September 1979. Unit Chairman Harris, however, specifically asked Hultquist to change that practice so that an employee going onto an irregular shift would carry his previously accumulated overtime with him, and an employee returning to a regular shift from an irregular shift would likewise carry back with him his accumulated overtime. However, that is beside the point with respect to the issue of whether irregular shift employees should somehow be deemed to be first-shift employees for overtime equalization purposes.

to the security officers in retaliation for their unionization. However, while several security officers seemed to earnestly believe that Hultquist so acted, there is no evidence showing that he did in fact do so.

CONCLUSIONS OF LAW[24]

1. Respondent, by its agent Robert Hultquist, interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights by:

(a) Coercively interrogating employees Hensley, McGhee, and Wiley about their views on the benefits, or lack of benefits, of union representation.

(b) Coercively interrogating employee Hensley about his view on why the employees in the security division of Respondent's Memphis facility voted in favor of union representation.

2. The unfair labor practices described in paragraph 1 affected commerce within the meaning of Section 10(a) of the Act.

3. There has been no showing that Respondent violated the Act in any other respect.

THE REMEDY

I shall recommend that CAT be ordered to cease and desist from engaging in the unfair labor practices referred to above and from any like or related acts. I shall also recommend that CAT post appropriate notices.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[25]

The Respondent, Caterpillar Tractor Company, Memphis, Tennessee, it officers, agents, successors, and asigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union and/or protected activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Memphis, Tennessee, facility copies of the attached notice marked "Appendix."[26] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that the said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply with herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

[24] The facts set forth above and upon which the following conclusions of law are based are a synthesis of the credited aspects of the testimony of all witnesses and exhibits. Although I did not, in the course of this Decision, discuss every bit of record testimony or documentary evidence, it has all been weighed and considered. To the extent that evidence not mentioned in this Decision might appear to contradict my factfindings, that evidence has not been disregarded but has been rejected as not credible or otherwise lacking probative worth.

[25] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[26] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT interrogate our employees concerning their union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

CATERPILLAR TRACTOR COMPANY